U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-M-C-

DATE: APR. 9, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a Muay Thai and mixed martial arts (MMA) coach and trainer, seeks classification as an individual of extraordinary ability in the athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not satisfy any of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner contends that he meets six of the ten regulatory criteria, and has established his eligibility for the classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339, 1343 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

According to a March 2018 statement, the Petitioner intends to enter the United States to work "as Class Instructor (Muay Thai) and Personal Instructor/Coach for the . . . [for] all skill levels from entry-level to expert." The president of the academy, , indicates that the organization is a Muay Thai, Brazilian Jiu-Jitsu, and Submission Grappling academy in .

The Petitioner has not alleged, and the record does not establish, that he has received a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). He, therefore, must submit evidence satisfying at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(v) to meet the initial evidence requirements. Upon a review of the documents, we conclude that he has not demonstrated, by a preponderance of the evidence, that he satisfies at least three of the following six criteria he claims to meet.[1]

[1] If a petitioner submits relevant, probative, and credible evidence that leads U.S. Citizenship and Immigration Services (USCIS) to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 4 (Dec. 22, 2010), http://www.uscis.gov/laws/policy-memoranda.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner claims that he meets this criterion because he is the two-time United States Champion. He submits certificates indicating that he was the 2005 and the 2003 The record includes documents about noting that it is "the oldest and largest organization of its kind, with over 107 countries in its membership," and that it provides fighters "the best opportunities to compete and to move up through the ranks of other top-level competitors." The documents further state that offers "an opportunity for fighters to develop from novice class amateur fighters to open class amateurs, and then onto the professional level, through safe and competitive events." According to a document entitled the events that the Petitioner won in 2003 and 2005 are only open to amateur fighters, who have not "signed a professional (boxing, kickboxing, MMA) contract or fought for any monetary compensation," or held "ranking in any professional list (i.e. etc.)."

The record is insufficient to confirm that the Petitioner's wins in the two amateur events constitute his receipt of nationally or internationally recognized prizes or awards for excellence in the field. Specifically, the record lacks sufficient evidence confirming that his accomplishments are recognized outside of on a national or international level. For example, he has not shown that his wins attracted the level of media attention that might indicate the awards' national or international recognition. Moreover, he has not submitted information about the individuals who participated in the amateur events that he was in, including their caliber and skill level, which might reveal the prestige and recognition of the competitions in the sport. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 6 (providing that for this criterion we should consider "[t]he number of awardees or prize recipients as well as any limitations on competitors" and that "an award limited to competitors from a single institution . . . may have little national or international significance"). Based on these reasons, the Petitioner has not established that his accomplishments in the 2003 and 2005 amateur events are recognized nationally or internationally, or that he satisfies this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner maintains that he satisfies this criterion because he was part of the national team in 2003 and 2005. He submits certificates showing that he was "an official member of the 2005 and "an official member of the 2003 According to an online printout entitled " "[i]n 2001, set up the first and that "[f]inalists from the event comprised the first US Team" that competed in the An online printout entitled states that the organization has "representatives in more than 90 countries and regularly holds competitions, culminating once a

year in the [redacted] which involves all the amateur material arts disciplines and styles under one set competition format."

The record shows that the Petitioner became the [redacted] national team member based on his 2003 and 2005 [redacted] competition successes. He, however, has not shown that his wins at these events qualify as "outstanding achievements," as referenced in the criterion. As discussed, the [redacted] competitions are open only to amateur fighters. As such, the top individuals in the sport, who are professional athletes, may not complete in them. In addition, the Petitioner has not submitted information, such as the number of participants in his events or the caliber of these participants, which might reveal whether winning these contests qualify as "outstanding achievements."

Moreover, the record demonstrates that there are multiple Muay Thai and MMA federations. As such, the record does not confirm that being on the [redacted] national team is similar to being on the national team of a sport that has one national governing body, which generally means that only the top competitors in the country make the team. Furthermore, the record lacks sufficient evidence confirming that the individuals who judged the Petitioner's events are recognized national or international experts. As such, he has not shown that his membership on the [redacted] national team constitutes evidence of his membership in organizations that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. *See* 8 C.F.R. § 204.5(h)(3)(ii).

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner contends that he meets this criterion. The record includes an Internet Movie Database (IMDb) printout, indicating that he appeared as the character [redacted] in the 2017 documentary film [redacted] This document does not satisfy the criterion because it does not include information about the author. In addition, other than listing his character in the film, the printout does not provide any additional information about him or his work as an athlete or coach. Other published materials, such as a 2013 *Fighters Only* article, while listing him as a coach for a particular fighter or establishment, similarly do not include information about him or his work. The Petitioner, therefore, has not established that these brief references satisfy the criterion.

According to a printout from buildseries.com, in [redacted] 2017, the program *Build* interviewed the Petitioner and others about [redacted] The Petitioner has not offered a transcript of the interview or documentation to show that *Build* constitutes a professional or major trade publication or other major media. As such, the record is insufficient to confirm that the interview was about him as relating to his work as a coach or athlete published in a qualifying publication or media.

The record contains other documents, including those showing that the Petitioner served as a consultant for an Adidas advertisement campaign entitled [redacted];[2] he was

[2] The Petitioner offers an October 2017 letter from the producer of the Adidas commercial [redacted] to

acknowledged in the books [redacted] and [redacted] both written by [redacted] he was one of the guest co-hosts on the podcast [redacted] with [redacted] and [redacted]; and he was the trainer for [redacted], a professional MMA fighter, who fought in an event that NBC Sports broadcast. While this evidence might show that the Petitioner has been gainfully employed and active in the sport, it does not demonstrate that the published materials are "about [him] . . . relating to [his] work in the field for which classification is sought." The Petitioner has not shown that these published materials discuss his biography, his athletic accomplishments, or his work as a coach and trainer. Based on these reasons, he has not demonstrated that he meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner indicates that he meets this criterion. The record supports his position. According to a June 2018 letter from [redacted] the president of [redacted], the Petitioner "has represented [the] organization as a Judge and Referee of [its] most prestigious championship events." [redacted] explains that the Petitioner was a judge at the 2016 [redacted], and "judged more than six world title fights." During this event, the Petitioner "assigned points to the individual fighters for given actions such as kicks . . . based on the impact of the strike on the opponent," and "determine[d] the winners of the world titles." The evidence, including [redacted] letter, sufficiently establishes that the Petitioner has participated as a judge of the work of others in the same or an allied field of specification for which classification is sought. *See* 8 C.F.R. § 204.5(h)(3)(iv).

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner alleges that he meets this criterion because he has developed unique training techniques that improve performance. To satisfy this criterion, the Petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. Major significance in the field may be shown through evidence that his original training methods have been widely accepted and implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 8-9.

The record includes a number of letters from individuals who have worked with the Petitioner, praising his training methods. For example, [redacted] states in a February 2018 letter that the Petitioner "has developed specific, innovative, and highly-effective and individualized Muay Thai and MMA programs" that "focus on a wide range of MMA, Muay Thai, and kickboxing techniques." He claims that the Petitioner "played a critical role in [his] success, including [his] victory over [redacted] in 2017. [redacted] a MMA and Brazilian Jiu-Jitsu fighter whom the Petitioner had trained, provides

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verify his involvement with the project. The letter, however, contains two different fonts: one font is used to describe his achievements and qualifications, while the other is used for the letter's introductory and closing paragraphs. This calls into question the authenticity of the letter and whether it represents the author's independent opinion.

in an October 2017 letter that "the pioneering, cutting-edge training plans [that the Petitioner] developed are the best . . . Muay Thai plans and programs" and they "led to [his] winning a prestigious championship." [redacted] states in a June 2018 letter that the Petitioner "is widely known for his original, innovative 'periodization' training methods" that "teaches the fighter[s] to manage their aerobic energy such that they use their peak energy at the most crucial moments in a tournament."

While the evidence sufficiently demonstrates that the Petitioner's training methods are innovative and unique, it does not confirm that they qualify as contributions of major significance in the field. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 8-9. [redacted] claims in his June 2018 letter that his academy as well as other training facilities have used the Petitioner's unique periodization plans. [redacted], the owner and head coach of [redacted] similarly states in his June 2018 letter that he has "use[d] and incorporate[d the Petitioner's] original technique in [his] own coaching and training," which led to his fighter [redacted] . . . win[ning] the [redacted] world championship gold medal in 2016."

These documents illustrate that the Petitioner's methods have been adopted by some coaches and trainers, but do not confirm that they have been accepted and implemented by a large number of coaches or that they have otherwise influenced training methods in the field in a significant way. For example, the record lacks major publication reporting on the Petitioner's methods or noting that they have been widely adopted in the sport. This criterion requires documentation of contributions of major significance in the field as a whole. Evidence of impact on a limited number of individuals are therefore insufficient to satisfy the criterion. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole); *Kazarian*, 596 F.3d at 1122 (finding "letters from physics professors attesting to [a petitioner's] contributions in the field" were insufficient to meet this criterion).

Similarly, although [redacted] provides in his June 2018 letter that the Petitioner has developed "a unique [redacted] to measure a student's progress, and that it "has been adopted by many leading instructors in the sport across the U.S.," the evidence does not substantiate his statements. Specifically, the record lacks documentation confirming that the Petitioner's grading system is unique, such that he is the first or one of the first person to have used it, or that others in the field has widely adopted this grading system.

The documents in the record, including reference letters and evidence we have not specifically discussed, do not confirm that the Petitioner's training methods or grading system have significantly impacted or influenced, or otherwise constitutes contributions of major significance in the field. Letters that offer general praises of the Petitioner and that repeat the regulatory language, but do not sufficiently explain how his contributions have already influenced the field significantly are insufficient to satisfy this criterion. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 9 (noting "[l]etters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion"). Based on these reasons, the Petitioner has not met this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner maintains that he meets this criterion because he works for [redacted]. According to a February 2018 letter from [redacted] the Petitioner "serves in the critical and leading positions of Class Instructor (Muay Thai) and Personal Instructor/Coach for the [redacted]," providing "group and private classes in all skill levels" and "periodic workshops and seminars," as well as serving "as a representative . . . to promote the Academy." The letter further notes that the Petitioner, "serving as both Lead Instructor and Co-Instructor," "plays an absolutely critical role in ensuring [the establishment's] continued success and reputation as a leading academy for professional fighters and celebrities." The evidence sufficiently shows that the Petitioner performs in a leading or critical role for [redacted].

The record, however, is insufficient to demonstrate that [redacted] is an organization or establishment that has a distinguished reputation, as required under 8 C.F.R. § 204.5(h)(3)(viii). The evidence indicates that the academy serves as a training facility for celebrities and professional MMA fighters, including [redacted] and [redacted]. A 2017 *GQ Style* article, which features "some of the best sweatshirts of the season, worn by the normal guys and badass fighters who train [at [redacted]]" indicates that the academy "has become an unlikely training spot for photographers, models, musicians, *Vogue* employees," and that its owner, [redacted], "is a famous Brazilian Jiu-Jitsu practitioner and instructor who comes from a long line of similarly well-known martial artists." In an email setting up *GQ Style*'s visit to the academy, the publication's photographer noted that the article is "a small fashion story." An online printout from bjjheroes.com provides that the academy is "a gym that rapidly became a reference in America and the world for high quality Jiu Jitsu."

While the evidence shows that [redacted] is a successful business that serves both professional and recreational athletes, including some who are in the entertainment business, it is insufficient to demonstrate that the academy has a distinguished reputation. For example, the record does not establish that the establishment has received media coverage at a level that shows its eminence, distinction, or excellence, which might confirm its distinguished reputation. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 10-11 (providing Webster's online dictionary's definition of "distinguished"). Although the Petitioner has offered documentation relating to [redacted] athletic accomplishments, this evidence is insufficient to confirm that his academy has a distinguished reputation.

On appeal, the Petitioner also claims that he has played a leading or critical role for [redacted]. While the evidence shows that he has competed in [redacted] events, trained fighters who participated in [redacted] competitions, and served as a referee and judge at [redacted] matches, it does not confirm that he holds any leadership position within the organization, or is responsible for duties that make him a leader of [redacted]. Moreover, the record does not confirm that he has contributed in a way that is of significant importance to the outcome or standing of the entity. While most individuals involved with an organization can have some impact on the entity, to establish a critical role, a petitioner must document that his or her work is crucial to the success of the entity. The Petitioner has

not made such a showing here. Based on these reasons, he has not established that he meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, upon a review of the record in its entirety, we conclude that it does not support a finding that he has established the acclaim and recognition required for this classification.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his athletic and coaching accomplishments is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of J-M-C-*, ID# 2608353 (AAO Apr. 9, 2019)